



TITLE SHEET FOR JUDGMENTS IN SUITS

**IN THE COURT OF THE ADITIONAL CIVIL JUDGE AND  
J.M.F.C., AT HOSADURGA.**

**DATED THIS THE 2<sup>nd</sup> DAY OF JANUARY 2017**

**: P R E S E N T :**

**SRI. T.SRIKANTH, B.A.L.,LL.B.,**  
PRL. CIVIL JUDGE & J.M.F.C., HOSADURGA.

**O.S.NO.218/2014**

**BETWEEN :**

SRI D.MAHESWARAPPA,  
S/O DODDAPPA,  
MAJOR,  
HEBBALLI POST,  
HOSADURGA TALUK,  
CHITRADURGA DISTRICT.

PLAINTIFF

**(BY SRI H.M.RUDRAKUMAR., ADVOCATE)**

**AND :**

1. SMT PARVATHAMMA,  
W/O H.D.KALAPPA,  
MAJOR,  
HEBBALLI POST,  
HOSADURGA TALUK,  
CHITRADURGA DISTRICT.

2. SRI H.K.BASAVARAJA,  
S/O H.D.KALAPPA,  
MAJOR,  
HEBBALLI POST,  
HOSADURGA TALUK,  
CHITRADURGA DISTRICT.

3. SRI H.K.HALLESH,  
S/O H.D.KALAPPA,  
MAJOR,  
HEBBALLI POST,  
HOSADURGA TALUK,

CHITRADURGA DISTRICT.

4. SRI H.K.SHIVANNA  
S/O H.D.KALAPPA,  
MAJOR,  
HEBBALLI POST,  
HOSADURGA TALUK,  
CHITRADURGA DISTRICT.

5. SMT PREMA,  
W/O LATE H.E.GANGADHARAPPA,  
MAJOR,  
HEBBALLI POST,  
HOSADURGA TALUK,  
CHITRADURGA DISTRICT.

DEFENDANTS

**(BY SRI N.GURUBASAPPA., ADVOCATE)**

|                                               |                      |               |             |
|-----------------------------------------------|----------------------|---------------|-------------|
| Date of Institution                           | 27/06/2014           |               |             |
| Nature of the Suit                            | PERMANENT INJUNCTION |               |             |
| Date of Commencement of recording of Evidence | 01/04/2015           |               |             |
| Date of Pronouncement of Judgment             | 02/01/2017           |               |             |
| <b>Total Duration</b>                         | Year/s<br>02         | Month/s<br>06 | Day/s<br>05 |

**(T.SRIKANTH)**  
**C/C Addl. Civil Judge & J.M.F.C.,**  
**Hosadurga**

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**: J U D G M E N T :**

The plaintiff has filed this suit against defendants seeking for the relief of permanent injunction and other allied reliefs, in respect of land bearing Sy.No.11/2, Khatha No.238, of Hebballi Village, Kasaba Hobli, Hosadurga Taluk, measuring 2 acres, with specific boundaries, (hereinafter called as the 'suit schedule property' for short).

2. According to plaintiff he is the absolute owner in possession and enjoyment of suit schedule property having acquired the same under family partition and the khata of the same is mutated in his name and is paying taxes to the authorities concerned. The defendants who are the neighboring land owners situated towards southern side of suit schedule property, without having right, title, interest, possession or anything over the same are trying to interfere with the possession and enjoyment of plaintiff over suit schedule property. The plaintiff being unable to withstand the high handed and illegal acts of defendants has filed this suit, praying for aforesaid reliefs.

3. On being served with suit summons the defendants 1 to 5 appeared before this court by engaging the services of an advocate and contesting the suit by filling their written statement. The defendant-2 filed written statement which has been adopted by other defendants by filing a memo.

4. The defendants in their written statement denied entire plaint averments and it is contended that, originally the land in Sy.No.11 was measuring 7 acres 25 guntas and the plaintiff got only 1 acre 31 guntas in his family partition towards his share. The plaintiff is not in possession and enjoyment of the suit schedule property measuring 2 acres. Hence, prayed to dismiss the suit.

5. Based on the above pleadings of the parties, this court has framed the following issues;

**: I S S U E S :**

1. Whether the plaintiff proves that he is in possession and enjoyment of the suit schedule property ?
2. Whether the plaintiff proves that defendants tried to interfere with his peaceful possession and enjoyment of suit schedule property ?

3. Whether plaintiff is entitled to perpetual injunction against the defendants as prayed in his plaint ?
4. What order or decree ?

6. In order to prove his case the plaintiff examined himself before this court as PW1 and got marked documents Ex.P1 to Ex.P18 and also examined two witnesses as PW2 and PW3 and closed his side. On the other hand defendant-2 examined himself before this court as DW1 and got marked documents Ex.D1 to Ex.D9 and also examined two witnesses as DW2 and DW3 and closed their side.

7. I have heard oral arguments of learned counsel for both parties. Perused the pleadings, evidences and materials available on record. My findings on the above issues are as follows;

- |            |   |                                       |
|------------|---|---------------------------------------|
| Point No.1 | : | In The Negative.                      |
| Point No.2 | : | In The Negative.                      |
| Point No.3 | : | In The Negative.                      |
| Point No.4 | : | As per final order for the following; |

**:: R E A S O N S ::**

**8. Issue No.1 :** According to plaintiff he acquired suit schedule property under his family partition. In order to prove his case the plaintiff mainly relied on Ex.P1-Certified Copy of order dated 27/02/1993 passed by Tahsildar, Hosadurga in RRT.Dispute.No.16/1991-92, Ex.P2-Mutation Register Extract, Ex.P3-RTC Extract and Ex.P4-Patta Book. Ex.P1 to Ex.P4 refers to land in Sy.No.11 totally measuring 7 acre 25 guntas, excluding kharab land of 29 guntas. From Ex.P1 to Ex.P4 it appears that plaintiff got 2 acres in said Sy.No.11. However, the plaintiff has not produced any document with respect to suit schedule Sy.No.11/2. The defendants are seriously disputing the extent of suit schedule property. According to defendants plaintiff got only 1 acre 31 guntas in suit schedule survey number. In support of their case, defendants mainly rely on Ex.D7-RTC Extract, which is in respect of suit schedule property. In Ex.D7 the extent of suit schedule property is mentioned as 1 acre 28 guntas only, including 2 guntas of kharab land. The plaintiff is not disputing Ex.D7. It is not the case of plaintiff that RTC extract in respect of suit

schedule property has been wrongly entered. Further, the plaintiff is not claiming any right over the properties of defendants. On the other hand, plaintiff's case is entirely based of Ex.P1 to Ex.P4 which are the earlier revenue records pertaining to Sy.No.11 totally measuring 7 acres 25 guntas. The plaintiff has not produced any revenue or survey documents in respect of suit schedule property. It appears that plaintiff intentionally not produced recent RTC extracts in respect of suit schedule property and tried to obtain decree from the hands of this court, on the basis of Ex.P1 to Ex.P4. As such plaintiff is guilty of suppression of true and relevant facts before this court.

9. According to defendants, out of 7 acre 25 guntas of land in Sy.No.11, defendnat-1 is owning 2 acre 1 gunta. One Rudrappa is owning 1 acre 15 guntas. One Eashwarappa is owning 2 acre 17 guntas and one Veerabhadrapa and another Nanjundappa are having 30 guntas each. In this regard, PW1 in his cross examination has stated as below;

zÁªÁ ,ÀªÉð £ÀA.11 MIÄÖ 7 JPÀgÉ 25  
 UÄÄAmÉ d«ÄÄ£ÄÄ EgÄÄvÀÛzÉ. ,ÄzÀj ,ÀªÉðÄ  
 £ÀA.£À°è 1£ÉÄ ¥ÀæwªÄçUÉ ,ÉÄjzÀ 16, 30,  
 35 UÄÄAmÉUÀ¼Ä 3 ¥ÉÇÄqÄÄUÀ½AzÀ MIÄÖ  
 2 JPÀgÉ 1 UÄÄAmÉ d«ÄÄ£ÄÄ EgÄÄvÀÛzÉ  
 JAzÀgÉ ,Äj. .... zÁªÁ ,ÀªÉðÄ £ÀA.  
 £À°è gÄÄzÀæ¥ÀÀ JA§ÄªÄjUÉ 1 JPÀgÉ 15  
 UÄÄAmÉ d«ÄÄ£ÄÄ EgÄÄvÀÛzÉ JAzÀgÉ  
 £À£ÀUÉ w½ç®è. F±ÀégÄ¥ÀÀ JA§ÄªÄjUÉ  
 ,ÄzÀj ,ÀªÉðÄ £ÀA.£À°è MIÄÖ 2 JPÀgÉ 17  
 UÄÄAmÉ d«ÄÄ£ÄÄ EgÄÄvÀÛzÄÉ JAzÀgÉ ,ÁQë  
 EgÄ§ºÄÄzÄÄ £Á£ÄÄ C¼ÄvÉ ªÄiÄr®è JAzÄÄ  
 £ÄÄrAiÄÄÄvÁÛgÉ. CzÀgÄAvÉ ,ÄzÀj ,ÀªÉðÄ  
 £ÀA.£À°è 30 UÄÄAmÉ «ÄgÄ"ÀszÄæ¥ÀÀ  
 JA§ÄªÄjUÉ ,ÉÄjzÄÄÝ JAzÀgÉ ,ÁQë  
 EgÄ§ºÄÄzÄÄ £Á£ÄÄ C¼ÄvÉ ªÄiÄr®è JAzÄÄ  
 £ÄÄrAiÄÄÄvÁÛgÉ. ,ÄzÀj ,ÀªÉðÄ £ÀA.£À°è  
 £ÄÄdÄÄqÄ¥ÀÀ JA§ÄªÄjUÉ 30 UÄÄAmÉ  
 d«ÄÄ£ÄÄ EgÄÄvÀÛzÄÉ JAzÀgÉ ,ÁQë ,ÄzÀj  
 £ÄÄdÄÄqÄ¥ÀÀ£Ä ªÄÄUÄ «ÄgÄ"ÀszÄæ¥ÀÀ  
 EzÄÄÝ ,ÄzÀj «ÄgÄ"ÀszÄæ¥ÀÀ£Ä ºÉ,ÄjUÉ  
 ,ÄzÀj ,ÄévÄÄÛ EgÄÄvÀÛzÉ JAzÄÄ  
 £ÄÄrAiÄÄÄvÁÛgÉ. ,ÄzÀj ªÉÄÄ-É ºÉÄ½zÀ  
 ,ÄévÄÄÛUÀ½UÉ ºÁUÄÆ £À£ÀUÉ  
 AiÄiÄªÄÄzÉÄ ,ÄA§AzÄss E®è JAzÀgÉ ,Äj.

In this regard, the defendants have produced Ex.D1 to  
 Ex.D9-RTC Extracts, in respect of lands in Sy.No.11/1P1,



Sy.No.11/1, Sy.No.11/1P2, Sy.No.11/1P3, Sy.No.11/1P4, Sy.No.11/1P5, Sy.No.11/2, Sy.No.11/3, Sy.No.11/4. The plaintiff is not disputing Ex.D1 to Ex.D9. The total extent of above lands exceeds 7 acre 25 guntas. Thus, there is serious doubt as to possession of plaintiff over 2 acres of land in Sy.No.11/2, especially when the RTC extract in respect of suit schedule property disclose that plaintiff is in possession of only 1 acre 28 guntas. The plaintiff failed to produce any other document to prove his possession over entire 2 acre of land.

10. At this stage, it is necessary to mention herein the evidence of PW3. The PW3 in his cross examination has stated that defendants have encroached about 10 guntas of land in plaintiff's property and that the plaintiff has filed this suit seeking for removal of said encroachment. The relevant portion of cross examination of PW3 is extracted as below;

.....      ¢Á¢   F   zÁªÉAiÄÄ£ÄÄß   ¥ÄæwªÁ  
¢AiÄÄgÄ   «gÄÄzÄÞ   MvÄÄÜªÄj   vÉgÄªÄÄ   PÉÆÄj  
ªÄÆrgÄÄvÁÜgÉ.   ¥ÄæwªÁ¢AiÄÄgÄÄ   ,ÄÄ.10  
UÄÄAmÉ d«ÄÄ£ÄÄ MvÄÄÜªÄj   ¢ÄiÁrgÄÄvÁÜgÉ.

From the above evidence of PW3 it is clear that, plaintiff is not in exclusive possession of suit schedule property. On careful scrutiny of the oral and documentary evidence placed on record, it is clear that plaintiff is not in exclusive possession of suit schedule property. **Hence, Issue No.1 is answered in the NEGATIVE.**

**11. Issue No.2 :** In view of failure to prove the possession over suit schedule property, it necessarily follows that plaintiff is also unable to prove the interference from the defendants as alleged. As such Ex.P6 to Ex.P18 produced by plaintiff in this regard need not be discussed in detail. **Hence, Issue No.2 is answered in the NEGATIVE.**

**12. Issue No.3 :** As the plaintiff failed to prove his possession, he is not entitled for the relief of permanent injunction claimed in the suit. In addition to the above, the very suit for bare injunction is not maintainable, in view of law laid down in the decision reported in *AIR 2008 SC 2033*, in case of *ANATHULLA SUDHAKAR -VS- P.BUCHI REDDY*. When

the plaintiff failed to produce documents of title and the defendants have denied the title of the plaintiff, there is a cloud cast upon the title of the plaintiff. Therefore, the plaintiff ought to have, at least, after filing of the written statement, got converted the suit into a suit for declaration of title and proper consequential relief, as per the dictum in the aforesaid decision. Therefore, the failure of the plaintiff to get the suit converted into a suit for declaration of title makes this suit not maintainable and on this count also the plaintiff is not entitled for any relief in the suit. **Hence, Issue No.3 is answered in the NEGATIVE.**

**13. Issue No.4 :** In view of the above discussions on issue No.1 to 3, I proceed to pass the following:-

**: O R D E R :**

The plaintiff's suit is hereby dismissed with costs.

Draw decree accordingly.

(Computerized to my dictation, corrected, revised and then signed by me in open court on this the 2<sup>nd</sup> day of January 2017)

**(T.SRIKANTH)**  
**C/C Addl. Civil Judge & J.M.F.C.,**  
**Hosadurga**

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**: A N N E X U R E :****Number of Witnesses examined on behalf of Plaintiff:**

|     |                     |            |
|-----|---------------------|------------|
| PW1 | Sri Maheshwarappa   | 01/04/2015 |
| PW2 | Smt Ushadevi        | 30/06/2015 |
| PW3 | Sri A.C.Thippeswamy | 30/06/2015 |

**List of Documents marked on behalf of the Plaintiff:**

|        |                                                                                                   |
|--------|---------------------------------------------------------------------------------------------------|
| Ex.P1  | Certified copy of order dated 27/02/1993 passed by Tahsildar, Hosadurga in RRT.DIS.No.16/1991-92. |
| Ex.P2  | Mutation Register Extract.                                                                        |
| Ex.P3  | RTC Extract.                                                                                      |
| Ex.P4  | Patta Book.                                                                                       |
| Ex.P5  | Tax Paid Receipt.                                                                                 |
| Ex.P6  | Certified copy of order sheet in C.C.No.529/2014.                                                 |
| Ex.P7  | Certified copy of final report filed in CR.No.246/2014 of Hosadurga PS.                           |
| Ex.P8  | Certified copy of FIR filed in CR.No.246/2014 of Hosadurga PS.                                    |
| Ex.P9  | Certified copy of FIR filed in CR.No.189/2014 of Hosadurga PS.                                    |
| Ex.P10 | Certified copy of complaint in CR.No.189/2014 of Hosadurga PS.                                    |
| Ex.P11 | Certified copy of Mahazar drawn in CR.No.189/2014 of Hosadurga PS.                                |
| Ex.P12 | Certified copy of FIR filed in CR.No.200/2014 of Hosadurga PS.                                    |
| Ex.P13 | Certified copy of complaint in CR.No.200/2014 of Hosadurga PS.                                    |
| Ex.P14 | Certified copy of Mahazar drawn in CR.No.200/2014 of Hosadurga PS.                                |

|             |                                                             |
|-------------|-------------------------------------------------------------|
| Ex.P15      | Postal Acknowledgment.                                      |
| Ex.P16      | Endorsement issued by Hosadurga PS.                         |
| Ex.P17 & 18 | Copy of letter dated 13/10/2014 along with postal receipts. |

**Number of Witnesses Examined for the Defendants:**

|     |                    |            |
|-----|--------------------|------------|
| DW1 | Sri H.K.Basavaraja | 5/09/2015  |
| DW2 | Sri H.M.Dinesh     | 21/11/2015 |
| DW3 | Sri Suresh         | 21/11/2015 |

**List of the Documents Marked for the Defendants:**

|            |               |
|------------|---------------|
| Ex.D1 to 9 | RTC Extracts. |
|------------|---------------|

**(T.SRIKANTH)**  
**C/C Addl. Civil Judge & J.M.F.C.,**  
**Hosadurga**

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